

S/L 14
12.12.2022
Court. No. 19
GB

W.P.A. 26269 of 2022

Manas Kumar Adak & Anr.
VS
The State of West Bengal & Ors.

Mr. Saibal Acharyya,
Mr. Pradip Paul.

...for the Petitioners.

Ms. Sipra Mazumdar,
Ms. Sangeeta Roy.

...for the State.

Affidavit-of-service filed in Court today, be kept with the record.

Despite service, none appears on behalf of the respondent nos.7 to 9. As this Court is not inclined to pass any mandatory directions as prayed for in the writ petition, the writ petition is taken up and disposed of in their absence.

The petitioners allege that the respondent no.9 had raised an unauthorized construction over a water body, without valid permission from the panchayat authorities. The specific allegation is that without any conversion to homestead land, the panchayat authorities could not have granted sanction. It is the contention of the petitioner that the construction has been raised in violation of the panchayat acts and rules.

It appears that a civil suit is pending and there is an order of status quo.

The allegation of violation of the order of status quo is to be adjudicated by the learned civil court.

However, the law is well settled that the permission granting authority has the jurisdiction to decide the issue of unauthorized construction and to effect demolition in case such violation of the building rules is detected.

Under such circumstances, the writ petition is disposed of with a direction upon the Balpai Gram Panchayat to treat the writ petition as a representation and

dispose of the same in accordance with law. While doing so, the following procedure shall be adopted:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent nos.7 to 9. An advance notice of the inspection shall be served upon the petitioners and the respondent nos.7 to 9 and all other interested parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.
- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and had been continuing, the authorities may take such interim measures by stopping such construction.
- c) The report of such inspection shall be prepared along with a sketch map, indicating the extent and nature of unauthorized construction, if any.
- d) Such report shall be handed over to the parties. The question of right, title and possession shall not be decided by the panchayat authorities.
- e) A hearing shall be given to the petitioners and the respondent nos.7 to 9. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority. All points raised by either party, will be decided.
- f) A reasoned order shall be passed and communicated to the parties. Once such reasoned order is passed and the allegation of unauthorized construction that is the construction without any conversion and/or without any sanction from the authority is established, the petitioners shall be at liberty to approach the civil court for modification and/or verification of the order of status quo. Thereafter the panchayat authorities shall proceed

in accordance with law in respect of the said unauthorized construction. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of Section 23(5) of the West Bengal Panchayat Act, 1973.

The court has not gone into the merits of the claims of the petitioner and the issues involved shall be decided independently, upon hearing the parties.

The entire exercise shall be completed within a period of four months from date of communication of this order.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)